LEGISLATIVE DIGEST
HOUSE REPUBLICAN CONFERENCE | CHAIRMAN MIKE PENCE
1420 LONGWORTH HOB, WASHINGTON, DC 20515 www.GOP.gov PHONE 202.226.2302 FAX 202.226.0154

H.J.Res. 3 — Privileged Resolution relating to the disapproval of obligations under the Emergency Economic Stabilization Act of 2008

FLOOR SITUATION

H.J.Res. 3 is expected to be considered on the floor on Thursday, January 22, 2009, under an expedited rule. This legislation was introduced by Representative Virginia Foxx (R-NC) on January 6, 2009.

SUMMARY

H.J.Res. 3 would resolve that the House and Senate disapprove of the release of the final $350 billion of funds for the Troubled Asset Relief Program (TARP) as authorized by section 115 of the Emergency Economic Stabilization Act (EESA). If enacted into law, this joint resolution would prohibit the release of the final $350 billion tranche of TARP funds authorized in EESA.

BACKGROUND

On October 3, 2008, the President signed the Emergency Economic Stabilization Act (EESA), which established the Troubled Asset Relief Program (TARP). The $700 billion program authorized the Department of Treasury to purchase "troubled assets" from financial and lending institutions in an effort to provide stability and restore confidence and liquidity to the financial markets. The first $250 billion of TARP funding was immediately authorized for use by Treasury after the passage of EESA. The next $100 billion was released at the request of the President. As of January 2009, Treasury had committed $354 billion in TARP funds to a myriad of companies and financial institutions. According to the legislation, the President is required to submit a written certification to Congress to receive the final $350 billion tranche of funds. Congress then has 15 calendar days to introduce a joint resolution of disapproval. If the joint resolution were enacted into law, the release of the final $350 billion would be blocked.

On Monday, January 12, 2009, then-President Bush requested the final $350 billion at the behest of President Obama, setting the 15 day disapproval clock in motion. On Thursday, January 15, 2009, the Senate acted on a TARP disapproval resolution, S.J. Res. 5, introduced by Sen. David Vitter (R-LA). The joint resolution of disapproval was defeated in the Senate by a vote of 42 to 52. Despite the resolutions failure in the Senate, House Members will consider another joint resolution of disapproval, H.J. Res. 3. Because the Senate has already rejected S.J. Res. 5, the Senate has exhausted the expedited procedures enacted in TARP, and therefore H.J. Res. 3 would not receive the same expedited consideration in the Senate if passed by the House. If the joint resolution of disapproval were to be passed in both chambers and vetoed by the President, the House would have an opportunity to consider overriding the veto.

Though the request for the release of the final tranche was requested by former-President Bush and is supported by President Obama, many Members of Congress have expressed a growing concern with how TARP funds have been allocated by Treasury. While urging Congress to quickly pass the bailout legislation in October, Treasury maintained that TARP funds would be used to purchase troubled assets to increase liquidity in the market. Treasury has since stated that it no longer considers the purchase of troubled liquid assets the best way to spend TARP funds and restore stability and confidence to the financial markets. In the final months of 2008, Treasury shifted the program's focus and began using TARP funds to make investments that were not discussed during the original debate over EESA.

1420 LONGWORTH HOB, WASHINGTON, DC 20515 www.GOP.gov PHONE 202.226.2302 FAX 202.226.0154

Since the initial passage of EESA, Treasury has created six distinct programs designed to allocate TARP funds.

1. The Capital Purchase Program (CPP) has been used by Treasury to purchase senior preferred shares of stock from healthy financial institutions. Treasury has committed $250 billion to this program, of which approximately $178 billion has been distributed.
2. The Targeted Investment Program (TIP) was designed to make federal investments in companies facing dwindling market confidence. The program is meant to "foster financial market stability and thereby to strengthen the economy and protect American jobs, savings, and retirement security." TIP has only been used to provide an additional $20 billion in investments in Citigroup after an initial $25 billion was invested in the financial giant through the CPP.
3. The Systemically Significant Failing Institution (SSFI) program was devised to supply capital to institutions whose collapse could result in a systemic disruption across financial and lending markets. This program has only been used to provide AIG with $40 billion.
4. The Asset Guarantee Program (AGP) provides guarantees for assets held by institutions that hold a large portfolio of distressed assets and are determined by Treasury to be "systemically significant." This program has yet to be used by Treasury.
5. The Automotive Industry Financing Program (AIFP) has been used to commit $19.4 billion to General Motors and Chrysler to "prevent a significant disruption of the American automotive industry that poses a systemic risk to financial market stability."
6. The Term Asset-Based Security Loan Program (TALF) provides $20 billion in credit protection for $200 billion in non-recourse loans made by the Federal Reserve to holders of certain AAA-rated asset-backed securities that are backed by newly originated consumer loans.

Since its passage, TARP has been sharply criticized for a lack of transparency and accountability regarding Treasury's disbursement of funds. According to a December Government Accountability Office (GAO) report, "Treasury has yet to address a number of critical issues, including determining how it will ensure that CPP is achieving its intended goals and monitoring compliance with limitations on executive compensation and dividend payments." The lack of transparency has made it increasingly difficult for lawmakers and the public to follow distributed TARP funds and assess the effect on financial markets. It has also made it difficult to assess the amount, if any, of taxpayer funds that may be recouped in the future.

TARP advocates initially stated that the program would be well-regulated, transparent, and likely cost taxpayers far less than $700 billion. In a letter sent to House Minority Leader John Boehner, Office of Management and Budget (OMB) Director Jim Nussle stated that, "The $700 billion figure is substantial, of course, but the size of the problem in our financial markets requires a commitment of this size. For several reasons, however, the impact on the taxpayer will be considerably less than $700 billion." In a letter from September, 2008, President Bush reiterated the argument that the total cost of the program would be far less than $700 billion, stating, "both the nonpartisan Congressional Budget Office and the Office of Management and Budget expect that the legislation considered would ultimately cost the taxpayer far less than the $700 billion. Because the government would be purchasing troubled assets and selling them once the market recovers, it is likely that many of the assets would go up in value over time."

Due to the variety of changes in the use of TARP funds, combined with a lack of consistent and adequate oversight, GAO noted that it has become difficult to track exactly what institutions have done with the assistance received through the TARP program. Sparse transparency requirements, and insufficient oversight by Treasury, have combined to make it undeterminable whether "the legislation considered would ultimately cost the taxpayer far less than the $700 billion" as the President stated in September.

1420 LONGWORTH HOB, WASHINGTON, DC 20515 www.GOP.gov PHONE 202.226.2302 FAX 202.226.0154

In an attempt to assuage the fears of Member's in Congress, President Obama's Director of the National Economic Council, Lawrence Summers, sent a letter to Senate Majority Leader Harry Reid on January 15, 2009. In the letter, Mr. Summers stated that the Obama Administration would commit between $50 billion and $100 billion in direct foreclosure mitigation for residential homes. The letter also outlined four major reforms that the Administration would implement: provide a clear explanation of investments made by Treasury using TARP funds, monitor and track the impact of TARP funds on lending, impose conditions (such as executive compensation limitations) on firms that receive TARP funds, and focus the use of TARP funds on increasing the flow of credit.

Though both the Bush and Obama Administrations have called for a release of the second tranche, many Members of Congress continue to question the wisdom for the final $350 billion. Even Treasury, when pushing for the initial TARP package, admitted that they had no plan to determine if the entire $700 billion would be necessary to shore up financial markets. According to a Treasury spokeswoman quoted in Forbes Magazine, the $700 billion figure was "not based on any particular data point. We just wanted to choose a really large number." Given that it's difficult to determine the effectiveness of the first $350 billion, many Members may question whether it is necessary.

Many Members may believe that both Administrations have failed to make a convincing case for why Congress should release the final $350 billion of TARP. Some Members may be concerned that—in the light of the nation's $1.2 trillion deficit and committee consideration of an upcoming $825 billion "stimulus package"—$350 billion in government spending on this program may do more to harm the economy than to help financial markets. In addition, Members may be concerned that the chances of recovering taxpayer TARP funds could be dramatically smaller as a result of using TARP funds for direct foreclosure assistance as proposed by the Obama Administration. Members may also be concerned that past experience suggests that the final $350 billion might be spent with little oversight, direction, or effect.

COST

A Congressional Budget Office estimate was not available at press time. However, H.J. Res. 3 would prohibit the release of the final $350 billion in TARP funds.

STAFF CONTACT

For questions or further information contact Andy Koenig at 6-2302.